Issue Date: 13 January 2012

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

CASE NO.: 2010-LDA-00017
OWCP NO.: 02-189854

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In the Matter of:

ERIKA McKAY as Guardian of DOUGLAS J. McKAY,
Claimant

v.

ITT FEDERAL SERVICES INTERNATIONAL CORPORATION,
Employer

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
Carrier

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Party-In-Interest

Before: Jonathan C. Calianos, Administrative Law Judge

Appearances:

Barry Lerner, Esq. (Barnett and Lerner, P.A.), Fort Lauderdale, Florida, for the Claimant

Frank Gerold, Esq. (Legge, Farrow, Kimmitt, McGrath, and Brown), Houston, Texas, for the Employer/Carrier

DECISION AND ORDER AWARDING BENEFITS

I. Statement of the Case

This case arises from a claim for workers' compensation benefits filed by Erika McKay, as guardian of Douglas McKay ("McKay" or the "Claimant") against ITT Federal Services

International Corporation ("ITT" or the "Employer") and Insurance Company of the State of Pennsylvania ("Insurance of Pennsylvania" or the "Carrier") (collectively "the Respondents") under the provisions of the Longshore and Harbor Workers' Compensation Act (the "Act"), 33 U.S.C. § 901 *et seq*., as extended by the Defense Base Act, 42 U.S.C. § 1651 *et seq*. The case was transferred to the Office of Administrative Law Judges for a formal evidentiary hearing, which was held on September 20, 2010, in Miami, Florida. *See* 33 U.S.C. § 919(d). The parties were represented by counsel and the official documents were admitted in full without objection as Administrative Law Judge Exhibits ("ALJX") 1-21. The parties' documentary evidence was admitted without objection as Joint Exhibits ("JX") 1-28, Claimant's Exhibits ("CX") 29-33, and Employer's Exhibits ("EX") 34-37.[1] Subsequent to the hearing, I kept the record open for the parties to submit additional evidence. Pursuant to my order of July 22, 2011, the record in this proceeding closed on September 16, 2011, and a deadline for post-hearing briefs was established. The Respondents filed their brief ("Resp't Br.") on October 19, 2011, and the Claimant filed his brief ("Cl. Br.") on October 20, 2011.

Upon consideration of the evidence and arguments presented, I find that the Claimant has met his burden of establishing causation and he is entitled to compensation and medical benefits under the Act. This case has a significant and drawn out history as a result of the parties seeking multiple continuances, keeping the record open well beyond the September 20, 2010 hearing, due to difficulties obtaining documents and foreign medical records and the need to translate many of the evidentiary documents. The amount of time that it has taken for the case to progress

[1] These exhibits have since been superseded by the parties' exhibits filed on May 6, 2011—specifically, Exhibits ("JX") 1-28, Claimant's Exhibits ("CX") 29-33, and Employer's Exhibits ("EX") 34-44. Subsequent to May 6, 2011, the parties withdrew JX-12-13,15-19 and additionally submitted EX-45-49 and CX-50-51. Exhibits JX-24-28 and EX-42-43 were designated as pending, and no documents were submitted for these exhibits before the closing of the record. Therefore, the final record includes the following: JX-1-11, 14, 20-28, CX- 29-33, 50-51, and EX-34-41, 44-49.

is unfortunate for the Claimant's family, but ultimately, I believe it was important to give the parties an opportunity to put their best foot forward. There was no live witness testimony, only documentary submissions, making credibility assessments difficult at best. I have reviewed the depositions in depth and base my decision on the transcripts and the record as a whole.

II. Stipulations and Issues Presented

The parties have stipulated to the following facts: (1) The Act applies to this claim; (2) The Claimant experienced a cardiac event on June 28, 2009, while at Camp Arifjan in Kuwait; (3) There was an Employer/Employee relationship at the time of the cardiac event; (4) The Employer was timely notified of the cardiac event; (5) The claim was timely filed; (6) The Notice of Controversion was timely filed; (7) Compensation benefits have not been paid to the Claimant; (8) The Claimant has not returned to his usual job; (9) The Claimant has been disabled since June 29, 2009; (10) Medical benefits have not been paid by the Carrier, and the Claimant is receiving Social Security Disability and medical benefits through other sources; (11) Maximum Medical Improvement ("MMI") occurred on June 29, 2009;[2] (12) The Claimant's average weekly wage at the time of the injury is $1,879.24. Cl. Br. 2-3; Resp't Br. 2-3. The issues remaining for my determination are causation and the nature and extent of McKay's disability. Upon consideration of the record as a whole, I find that McKay is entitled to compensation and medical benefits under the Act.

III. Summary of the Facts

Douglas McKay is 55 years old, and currently resides in Germany. JX-7 at 1, 5. He retired from the United States Army in 1995, and since 2006, McKay was employed by three

[2] Claimant's Brief stated that the stipulated date of MMI was June 20, 2009, and Respondents' Brief stated that the stipulated date of MMI was June 29, 2009. Claimant later refers in his brief to the date of MMI as June 29, 2009, which is the day after McKay's heart attack. Cl. Br. 35. I find that the Claimant's initial reference to June 20, 2009 as the date of MMI date was a typographical error.

separate defense contractors in Kuwait. JX-7 at 4. First, he was employed at CSA, Ltd. in November 2006 as a Technical Inspector, and then at Honeywell Technology Solutions, Inc. in August 2007 as a Mechanic Lead Supervisor. JX-8 at 18-19; JX-7 at 4. McKay suffered from a heart attack in 2008, and while he was on medical leave, he was laid off from his position at Honeywell. JX-8 at 26, 30-31. In June 2009, after recovering from his heart attack, McKay returned to Kuwait to work for ITT. JX-1 at 7. McKay's wife, Erika McKay, testified that McKay thought he would be working at ITT as an operations coordinator—a desk job—but when he arrived in Kuwait, he discovered that the job would involve outside manual labor. JX-8 at 35; *see also* JX-5-1. He was informed that the desk position was no longer available, and that he instead was assigned to do hard physical labor, moving heavy equipment onto vehicles. CX-32 at 7-9. His daily duties included working outside in 110 to 140 degree temperatures, counting and identifying vehicles, identifying what equipment needed to be placed on the vehicles, moving the equipment, which could weigh up to 70-90 pounds, onto the vehicles, and then tying down the vehicles so that they would be ready to ship out. CX-32 at 13-14.

McKay's co-worker at ITT and friend, Edward Sensano, testified that after working with McKay for approximately 3 or 4 days, he noticed the heat taking a toll on McKay. CX-32 at 11. McKay's wife also testified that McKay had informed her that the "heat [was] getting to him." JX-8 at 40. On June 21, 2009, McKay visited a clinic on the base and was admitted with congestive heart failure. JX-39 at 8. On June 24, 2009, McKay was released from the clinic without limitations. JX-39 at 6.

On June 28, 2009, McKay returned to ITT's main office at approximately 4:30 p.m., after working outside throughout the day, to complete his daily reporting. CX-32 at 23, 25. Once McKay sat down in the office, he began having difficulty breathing and was making "choking

noises." CX-32 at 19. Emergency medical personnel arrived at the scene, at which time McKay was unresponsive. JX-2 at 1. Emergency personnel attempted CPR and used defibrillators several times, before McKay was transferred to a nearby hospital in Kuwait. EX-39 at 3; CX-32 at 19. McKay suffered from ventricular tachycardia, which caused severe neurological damage, and he remains in a coma to date. EX-36 at 2; CX-29 at 2.

Prior to June 28, 2009, McKay had a significant history of coronary artery disease. JX-8 at 24. He suffered from a myocardial infarction as well as congestive heart failure in 2008, after which he underwent stent placement with three stents. JX-8 at 24. In addition to his heart disease, McKay is diagnosed with diabetes, hyperlipidemia, and hypothyroidism, and he has a history of cigarette smoking. CX-51 at 8; JX-11 at 4.

IV. Findings of Fact and Conclusions of Law

A. Causation

1. *Prima Facie* Case

A claimant seeking workers' compensation benefits under the Act must establish that he suffered an "accidental injury . . . arising out of and in the course of employment. . . ." 33 U.S.C. § 902(2). In determining whether an injury arose out of and in the course of employment, a claimant is assisted by section 20(a) of the Act which creates a presumption that a claim comes within its provisions. 33 U.S.C. § 920(a). A claimant establishes a *prima facie* case by proving that he suffered some harm and that conditions existed which could have caused the harm. *Bath Iron Works Corp. v. Brown*, 194 F.3d 1, 4 (1st Cir. 1999); *Rainey v. Dir., OWCP*, 517 F.3d 632, 634 (2d Cir. 2008) (*citing Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001)); *Merrill v. Todd Pac. Shipyards Corp.*, 25 BRBS 140, 144 (1991). In presenting his case, "the claimant is not required to show a causal connection between the harm and his working

conditions, but rather must show only that the harm could have been caused by his working conditions." *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 605 (1st Cir. 2004). The physical harm can be an aggravation of a previously existing condition. *Id.*; *see Gardner v. Dir., OWCP*, 640 F.2d 1385, 1389 (1st Cir. 1981) (holding that aggravation of claimant's symptoms from a previously existing condition was compensable under the Act); *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 517 (5th Cir. 1986) ("[W]here an employment injury worsens or combines with a preexisting impairment to produce a disability greater than that which would have resulted from the employment injury alone, the entire resulting disability is compensable.").

McKay has set forth the two elements necessary for establishing a *prima facie* case. First, McKay has provided evidence that he has suffered a harm—specifically, ventricular tachycardia arrest on June 28, 2009. Second, he has provided evidence that his heart attack could have been caused, at least in part, by his working conditions at ITT. This is demonstrated by the testimony of Edward Sensano regarding the working conditions that he and McKay were subjected to while employed at ITT. Sensano testified that he and the Claimant were required to work outside in 110 to 140 degree temperatures, loading equipment averaging between 70 to 90 pounds onto vehicles. CX-32 at 13. Additionally, McKay's wife testified that she spoke to Claimant after he arrived in Kuwait in June 2009, and he communicated to her that the job was not what he had thought, but rather manual labor work outside, and that the "heat [was] getting to him." JX-8 at 35, 40.

Claimant's medical expert, Dr. David E. Perloff, wrote in his medical report dated August 4, 2010: "Apparently the patient was under some extreme working conditions when he suffered a cardiac arrest . . . it is well known that harsh working conditions can increase the likelihood of a . . . ventricular tachycardia arrest . . . . For this reason, I do believe that the work

environment and the stressors that he was under could have certainly contributed to the likelihood of this patient suffering an event." CX-30 at 1. Dr. Perloff also opined that the work environment and stressors could have caused McKay's pre-existing conditions to become symptomatic. CX-30 at 1. At his deposition on August 17, 2011, Dr. Perloff testified that there was "no question" that the work factors coupled with McKay's pre-existing condition contributed to his ultimate cardiac arrest on June 28, 2009. CX-51 at 18. The testimony of Sensano and Mrs. McKay, combined with the medical opinions of Dr. Perloff, establish a *prima facie* case, and having met his *prima facie* burden, McKay is entitled to the section 20(a) presumption. *See* 33 U.S.C. § 920(a).

2. Rebuttal

Once a *prima facie* case is established, the burden shifts to the respondent to "rebut the presumption with substantial evidence that the [claimant's injury] . . . was not caused or aggravated by his employment." *Bath Iron Works Corp. v. Dir., OWCP*, 109 F.3d 53, 56 (1st Cir. 1997); *Rainey*, 517 F.3d at 634; *Merrill*, 25 BRBS at 144. At the rebuttal stage, the respondent bears a burden of production, not persuasion. *Rainey*, 517 F.3d at 637 (citation omitted). Evidence is "substantial" if it is the kind that a reasonable mind might accept as adequate to support a finding that the workplace conditions did not cause the injury. *Preston*, 380 F.3d at 605 n.2; *Rainey*, 517 F.3d at 637 (citation omitted); *see Richardson v. Perales*, 402 U.S. 389, 401 (1971). Under the substantial evidence standard, a respondent does not have to exclude any possibility of a causal connection to employment; it is enough that it produce medical evidence of "reasonable probabilities" demonstrating lack of causation. *Bath Iron Works Corp. v. Dir., OWCP*, 137 F.3d 673, 675 (1st Cir. 1998); *see Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 289 (5th Cir. 2003), *cert. denied*, 540 U.S. 1056 (2003) (rejecting

requirement that an employer "rule out" causation or submit "unequivocal" or "specific and comprehensive" evidence to rebut the presumption and reaffirming that "the evidentiary standard for rebutting the § 20(a) presumption is the minimal requirement that an employer submit only 'substantial evidence to contrary'"). A respondent may sufficiently rebut the presumption by introducing testimony of a physician who unequivocally states with a reasonable degree of medical certainty that the harm suffered by the claimant is not related to his employment or working conditions. *O'Kelley v. Dept. of the Army/NAF*, 34 BRBS 39, 41-42 (2000). When a respondent offers sufficient evidence to rebut the presumption, only then is the presumption overcome. *Conoco, Inc. v. Dir., OWCP*, 194 F.3d 684, 690 (5th Cir. 1999) (*citing Noble Drilling v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986).

After reviewing all the evidence in the record, I find that the Respondents have failed to rebut the section 20(a) presumption. None of the medical experts unequivocally state that the harm suffered by the Claimant is not related to his employment or working conditions. *See O'Kelley*, 34 BRBS at 41-42. In fact, the medical opinions of all three medical experts retained in this case support a finding of causation; the medical experts all opined that physical labor performed outdoors in temperatures of 110 to 140 degrees could likely aggravate McKay's pre-existing conditions and precipitate the cardiac arrest and resulting brain damage.

ITT's medical expert, Dr. Michael J. Wasserman, testified that "the preexisting conditions set [McKay] up for [the cardiac arrest], and . . . the straw that broke the camel's back was the conditions that existed on that day that he was working when he collapsed." EX-48 at 19-20. Dr. Wasserman opined that the extreme heat, lack of hydration, and the type of work required of McKay were aggravating factors when combined with McKay's pre-existing conditions. EX-48 at 10-14. In Dr. Wasserman's medical report dated May 4, 2011, he wrote

that "[McKay's] working environment was quite unhealthy, and this is particularly true for an individual with his known pre-existing medical state. The heat and strenuous work he reportedly performed likely aggravated these pre-existing conditions and helped precipitate the cardiac arrest and resultant anoxic encephalopathy." EX-38 at 2. ITT's second medical expert, Dr. Raymond Russell, III, agreed that 8-12 hour work days involving heavy physical labor could factor into a cardiac episode, and testified that he would not have cleared McKay to work in the position at ITT. EX-47 at 10.

Although the Respondents attempt to strengthen their argument by questioning the credibility of Edward Sensano, there is nothing in his deposition to suggest that he had an ulterior motive. I find, based on the record before me, that Sensano is a credible witness. Furthermore, the Respondents had the opportunity to produce its own witness and/or evidence to rebut Sensano, or prove any inconsistencies in his testimony, but failed to do so. Sensano was the only eye witness in this case, and his testimony is uncontroverted; as such I accept his testimony and accord it significant weight in this analysis.

ITT argues that that McKay's pre-existing conditions, including his history of coronary artery disease, and his myocardial infarction in 2008, caused his cardiac arrest in 2009. There is no doubt that these pre-existing conditions contributed to McKay's ultimate ventricular tachycardia, but ITT fails to acknowledge that under the Act, the occupational cause need not be the sole cause, or even a primary cause, of the Claimant's impairment to trigger entitlement to disability benefits, and even a small contribution by working conditions is sufficient. *See Bath Iron Works Corp. v. Dir., OWCP*, 137 F.3d 673, 676 (1st Cir. 1998) (Lynch, J., dissenting). Even if the pre-existing conditions were the main catalyst for the cardiac arrest, even a slight aggravation resulting from McKay's harsh working environment is sufficient for a finding of

causation. Moreover, when considering the "'common sense of the situation,'" it is obvious that lifting 70 to 90 pound equipment in 110 to 140 degree temperatures, only a few days after being hospitalized for congestive heart failure, would aggravate a pre-existing heart condition. This conclusion is supported by the medical experts who testified that they would not have cleared McKay for such work. *See Atlantic Marine, Inc. v. Bruce*, 661 F.2d 898, 900 (5th Cir. 1981) (internal citations omitted); EX-47 at 10. ITT has failed to provide unequivocal evidence that McKay's employment did not cause or contribute to his cardiac arrest. Consequently, applying the section 20(a) presumption, I find causation in this case.[3]

B. Nature and Extent of Disability

"Disability" is "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment . . . ." 33 U.S.C. § 902(10); *CNA Ins. Co. v. Legrow*, 935 F.2d 430, 434 (1st Cir. 1991). Disability is addressed in terms of nature and extent. Thus, a disability analysis is comprised of a two-part inquiry: 1) whether the nature of the disability is temporary or permanent; and 2) whether the extent of the disability is partial or total. As to the first inquiry, the nature of the disability depends solely on the medical evidence in the record. *See, e.g., SGS Control Services v. Dir., OWCP*, 86 F.3d 438 (5th Cir. 1996). However, as to the second inquiry, the extent of the injury is a monetary as well as medical concept. *See, e.g., Quick*, 397 F.2d at 648.

A permanent disability is one which has continued for a lengthy period and is of lasting or indefinite duration, as distinguished from a temporary one in which recovery merely awaits a

[3] The Claimant alternatively argues that he is entitled to compensation under the "zone of special danger" doctrine. Because I find that the Claimant has met his *prima facie* burden of causation, and the Respondents failed to rebut the presumption, it is unnecessary to address the "zone of special danger" argument. Furthermore, this doctrine is typically used when the claimant was "off duty" when the alleged injury occurred. *See O'Leary v. Brown-Pacific-*Mason, 340 U.S. 504, 507 (1951). In contrast, McKay's cardiac arrest occurred while he was on the job, and in the course of his duties at ITT.

normal healing period. *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, 654 (5th Cir. 1968); *see Seidel v. General Dynamics Corp.*, 22 BRBS 403, 407 (1989). The parties stipulated that McKay reached maximum medical improvement on June 29, 2009, and therefore, I find that McKay's disability became permanent on this date. *See Stevens v. Lockheed Shipbuilding Co*., 22 BRBS 155, 157 (1989) ("The traditional method by which the nature of disability is determined is to ascertain the date of maximum medical improvement. If a claimant has reached MMI, then generally the disability is characterized as permanent.").

As stated above, the extent of disability is usually characterized as either total or partial. Total disability is defined as complete incapacity to earn pre-injury wages in the same work as at the time of injury or in any other employment. The employee has the initial burden establishing a *prima facie* case of total disability, by showing that he cannot return to his regular or usual employment due to his work-related injury. *Elliott v. C & P Telephone Co.*, 16 BRBS 89, 91 (1984). Once a *prima facie* case is proven by the claimant, the burden shifts to the Employer to show suitable alternative employment. *Clophus v. Amoco Prod. Co.*, 21 BRBS 261 (1988); *Nguyen v. Ebbtide Fabricators*, 19 BRBS 142 (1986). A failure to prove suitable alternative employment results in a finding of total disability. *Manigault v. Stevens Shipping Co.*, 22 BRBS 332 (1989); *MacDonald v. Trailer Marine Transp. Corp.*, 18 BRBS 259 (1986), *aff'd*, No. 86-3444 (11th Cir. 1987) (unpublished). The parties did not present arguments on the issue of total versus partial disability; nonetheless, an in-depth analysis is not required in a case such as this, where the Claimant has remained in a coma since his injury in June 2009. It is obvious that McKay is unable to perform any type of employment, and he is therefore totally disabled.

C. Compensation

The Act provides that "[i]n case of total disability adjudged to be permanent 66 2/3 per centum of the average weekly wages shall be paid to the employee during the continuance of such total disability." 33 U.S.C. § 908(a). Total and permanent disability benefits are limited by section 6(b)(1) of the Act, which states that disability benefits "shall not exceed an amount equal to 200 per centum of the applicable national average weekly wage." 33 U.S.C. § 906(b)(1). The national average weekly wage ("NAWW") as of June 29, 2009, the date that McKay's disability commenced, is $600.31, making the maximum compensation rate for this period $1,200.62 per week. *See* U.S. Dep't of Labor, National Average Weekly Wages (NAWW), Minimum and Maximum Compensation Rates, and Annual October Increases (Section 10(f)), http://www.dol.gov/owcp/dlhwc/NAWWinfo.htm (last visited January 6, 2012); *see also*, *Reposky v. Int'l Transp. Servs.*, 40 BRBS 65, 75 (2006). The parties stipulated that the average weekly wage at the time of injury was $1,879.24 per week. Sixty-six and two-thirds per centum of that amount is $1,252.83. McKay is therefore entitled to maximum compensation rate of $1,200.62 per week commencing June 29, 2009.

Under section 6(c), determinations of the NAWW "with respect to a period shall apply to employees . . . currently receiving compensation for permanent total disability . . . during such period." 33 U.S.C. § 906(c). Under section 6(c), McKay is entitled to the new maximum compensation rate as of October 1, 2009, because he was "currently receiving compensation for permanent total disability" during this period. *See Marko v. Morris Boney Co*., 23 BRBS 353 (1990). Therefore, commencing October 1, 2009, McKay is entitled to the new maximum compensation rate of $1,224.66. Again, on October 1, 2010, the maximum compensation rate increased to $1,256.84, which is higher than two-thirds of McKay's average weekly wage;

therefore the maximum compensation rate no longer applies as of October 1, 2010, and McKay is entitled permanent and total disability benefits under section 8(a) in the amount of $1,252.83 per week from October 1, 2010 to the present and continuing.

D. Interest

Although not specifically authorized in the Act, the Benefits Review Board and the courts have consistently upheld interest awards on past due benefits to ensure that the employee receives the full amount of compensation due. *Foundation Constructors, Inc. v. Dir., OWCP*, 950 F.2d 621, 625 (9th Cir. 1991); *Cowart v. Nicklos Drilling Co.*, 23 BRBS 42, 47 (1989), *rev'd in part*, 907 F.2d 1552 (5th Cir. 1990), *aff'd en banc*, 927 F.2d 828 (5th Cir. 1991), *aff'd*, 505 U.S. 469 (1992); *Grant v. Portland Stevedoring Co.*, 16 BRBS 267, 269 (1984), *on recon.*, 17 BRBS 20, 23 (1985). Interest is due on all unpaid compensation. *Adams v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 78, 84 (1989). Interest is mandatory and cannot be waived in a contested case. *Byrum v. Newport News Shipbuilding & Dry Dock Co.*, 14 BRBS 833, 837 (1982). Interest is computed from the date each compensation payment becomes overdue. The first installment of compensation under the Act becomes due fourteen days after a claimant gives notice to the employer of an injury or the employer has knowledge of the injury. 33 U.S.C. § 914(b). Since compensation payments were not timely made, I find that McKay is entitled to an award of prejudgment interest. The interest shall be assessed as of the date McKay's compensation became due. *Wilkerson*, 125 F.3d at 907-08 (5th Cir. 1997). The appropriate interest rate is the rate employed by the United States District Courts under 28 U.S.C. § 1961, which is periodically changed to reflect the yield on United States Treasury Bills. *Grant*, 16 BRBS at 270. This compensation order incorporates 28 U.S.C. § 1961 by reference

and provides for its specific administrative application by the District Director. The appropriate rate shall be determined as of the filing date of this Decision and Order with the District Director.

E. Medical Care

An employer found liable for the payment of compensation is additionally responsible pursuant to section 7(a) of the Act for those medical expenses reasonably and necessarily incurred as a result of a work-related injury. 33 U.S.C. § 907; *Dupre*, 23 BRBS at 94 (*citing Pernell v. Capitol Hill Masonry*, 11 BRBS 532, 539 (1979)). Accordingly, ITT shall remain liable for all reasonable and necessary medical care as required by McKay for treatment of his work-related injuries.

F. Attorney's Fees

Having successfully established his right to compensation, McKay is entitled to an award of attorney fees under section 28 of the Act. 33 U.S.C. § 928; *Am. Stevedores v. Salzano*, 538 F.2d 933, 937 (2d Cir. 1976).

V. ORDER

Accordingly, it is hereby **ORDERED** that:

1. Pursuant to 33 U.S.C. § 908(a), ITT Federal Services International Corp./ Insurance Company of the State of Pennsylvania shall pay to Douglas McKay permanent and total disability benefits at the maximum compensation rate pursuant to 33 U.S.C. § 906(b)(1), which is $1,200.62 per week from June 29, 2009 to September 31, 2009, and $1,224.66 per week from October 1, 2009 to September 30, 2010; thereafter, ITT Federal Services International Corp./Insurance Company of the State of Pennsylvania shall pay to McKay permanent and total disability benefits, pursuant to 33 U.S.C. § 908(a), in the amount of $1,252.83 from October 1, 2010 to the present and continuing plus annual adjustments pursuant to Section 10(f) of the Act, 33 U.S.C. § 910(f);

2. ITT Federal Services International Corp./Insurance Company of the State of Pennsylvania shall pay to McKay interest on any past due compensation benefits at the Treasury Bill rate applicable under 28 U.S.C.

§ 1961, computed from the date each payment was originally due until paid;

3. Pursuant to 33 U.S.C. § 907, ITT Federal Services International Corp./ Insurance Company of the State of Pennsylvania shall pay all reasonable and necessary medical care for treatment of all of McKay's work-related injuries;

4. On October 19, 2011, the Respondents requested and argued for relief from the Special Fund under section 8(f) in their post-hearing brief. Should the Director, Office of Workers' Compensation Programs object to Special Fund relief under section 8(f), it shall file its objection no later than **30 days** from the date of this Decision and Order;

5. If the Claimant seeks an award of attorney's fees and costs pursuant to 33 U.S.C. § 928, an application conforming to the requirements of 20 C.F.R. § 702.132(a) shall be filed within **30 days** of the date on which this Decision and Order is filed in the office of the District Director. Should the Employer/Carrier object to any fees or costs requested in the application, the parties shall discuss and attempt to informally resolve the objections. Any agreement reached between the parties as a result of these discussions shall be filed in the form of a stipulation. In the event that the parties are unable to resolve all issues relating to the requested fees and costs, the Employer/Carrier's objections shall be filed not later than **30 days** following service of the fee application. **The objections must be accompanied by a certification that the objecting party made a good faith effort to resolve the issues with the Claimant prior to the filing of the objections;** and

6. All computations of benefits and other calculations provided for in this Order are subject to verification and adjustment by the District Director.

SO ORDERED.

A

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts